

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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IN RE: COLUMBIA UNIVERSITY  
PATENT LITIGATION

MDL NO. 1592

This Document Relates To All Actions.

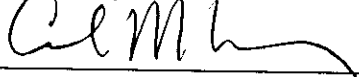
**PLAINTIFFS' MOTION FOR  
LIMITED DISCOVERY RELEVANT TO  
THE ISSUE OF NON-STATUTORY DOUBLE PATENTING**

Pursuant to the Court's June 23, 2004 Order, plaintiffs seek leave to obtain from Columbia limited and focused discovery relevant to the issue of non-statutory double patenting, namely the continual production by Columbia of the ongoing prosecution file for U.S. patent application No. 08/447,159 ("159 application"), as it becomes available, as well as Columbia's current copy of the file history. As grounds for this request, plaintiffs state that the '159 file history is relevant to claim construction of the claims in the '275 patent and the prior Axel patents, as more fully set forth in the accompanying memorandum of law.

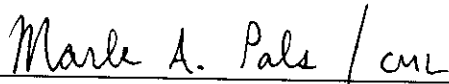
Plaintiffs do not seek other discovery of Columbia at this time based upon Columbia's agreement to promptly produce copies of all papers filed in the reexamination and reissue proceedings for the '275 patent and to produce copies of corresponding foreign file histories in the possession of Cooper & Dunham, and based upon the understanding that Columbia does not intend to rely upon any testimony of the inventors or John White in connection with the double patenting issues in this case. If, in light of Columbia's responsive contentions, expert reports, or arguments proffered by Columbia to oppose summary judgment, it appears that further fact

discovery is necessary or appropriate, plaintiffs reserve the right to ask that the scope of fact discovery be revisited at that time.

DATED: July 16, 2004



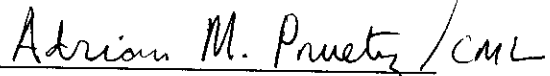
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#### **Certification of Counsel**

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for plaintiffs Biogen and Genzyme conferred with counsel for Columbia regarding the issues addressed in this motion but was unable to resolve or narrow the issues.

Cal M L

#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of July, 2004, I caused a true copy of the above document to be served upon counsel of record for all parties in this action.

Cal M L